REPORT
AND
RECOMMENDATIONS
OF THE
COMPENSATION
ADVISORY
COMMITTEE

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REPORT AND RECOMMENDATIONS OF THE COMPENSATION ADVISORY COMMITTEE

Members: Dr. Anne Pomeroy Autor, Chairman

Mr. Ellison Framst

Mr. David Wilson

Methods of Procedure:

Directed by an amendement to the Provincial Court Act passed by the legislature in July 1986, the Compensation Advisory Committee began its task in early November of 1986. The Committee met initially to determine the procedure to be used in reaching a recommendation regarding remuneration, allowances and benefits for judges of the provincial court to be presented to the Attorney General.

Although the Office of the Attorney General offered to provide any required information and to assist in arranging meetings requested by the Committee, no guidelines of procedure, briefings or other directives were given to the Committee regarding its mandate. The Committee was, therefore, free to devise its own methods for preparing the recommendation.

At its first meeting the Committee developed an organizational plan designed to use the limited time available in the most effective way. Information would be gathered in three general ways: 1) Formal presentations from the Chief Judge and other senior judges and from the representatives of the provincial court judges (legal counsel, and others speaking on behalf of the judges). 2) Informal meetings with provincial court judges and 3) compilation of relevant documents from the provincial government, the federal government and other sources, including the 1983 "Lang Report" on Federal Court Judges Salaries and Benefits submitted to the Minister of Justice of Canada in 1983.

The Committee determined that one of its most important functions was to make itself available to the Provincial Court Judges not only in Vancouver or the Lower Mainland but in as many areas of the province as was possible in the time available. This decision was made in recognition of the wide geographic and demographic variability in British Columbia and the resultant differences in conditions under which the provincial judges must administer their courts. The Committee selected several regions in British Columbia as reasonably representative and planned to visit the judges, the courts, support staff of the courts, the chief law officers of the region and, where possible, a community representative such as the local mayor.

These guidelines allowed the Committee to meet informally approximately one third of the provincial court judges, to view

different court facilities and working conditions and to meet a great variety of support people in the court system as well as representatives of law enforcement and of the community. These experiences gave the Committee the confidence to make its recommendations and to make further comments on the provincial court system intended as useful suggestions. Although, perhaps, acting beyond the scope of its mandate the Committee wished to offer these insights gained after a unique experience. The Committee concluded, however, that the proffered suggestions are clearly related to the substance of this report.

Specific Recommendations:

1. Retroactive salary increase for 1986 of $2,209 for all judges.

2. Elimination, as of January 1, 1987, of the Judicial Benefit Plan. In the judgement of the Committee, the Judicial Benefit Plan is unwieldy, unduly complex and functions to be unfair to individual judges. Furthermore, the Plan has a very low level of acceptability with the judges.

3. Base wage per annum as of January 1, 1987 to be $75,868 which derives from $73,659 (representing the original base salary of $66,963 plus the cash value of the Judicial Benefit Plan) plus $2,209.

4. Salary increase for 1987 of 5% calculated from the $75,868 base salary thus providing a salary of $79,661 for 1987.

5. Salary increase for 1988 of 5% calculated from the 1987 salary thus providing a salary of $83,644 for 1988. The salary recommended for 1988 brings the compensation for the judges to a level considered by the Committee to be appropriate when taking into account all relevant and related circumstances.

6. The Pension and Life Insurance benefits beginning 1987 to be calculated on a base salary of $79,661 and to increase with increased salary.

7. All judges including Administrative and Associate Chief Judges to receive the same salary.

8. The Chief Judge to receive $6,000 per year in addition to the judges base salary.

9. Holidays to be increased to 27 working days per year. Full holiday time must be taken in each calendar year and cannot be banked.

10. In order to encourage access to continuing education each judge may be allowed up to 5 working days per year to attend judicial

professional and educational meetings. This time cannot be used as additional holiday time, however, and must be taken with the approval of the Chief Judge.

It is recommended that sufficient funds should be allocated each year to support travel expenses for a certain number of judges to attend judicial education seminars, many of which are held in eastern Canada. This is recommended in order to make it possible for a greater cross-section of the judges to participate in continuing education. The benefits accruing from the enhancement of continuing education for the judges is considered by the Committee to out-weigh the cost of this recommendation, particularly since the opportunity to attend these meetings has not always been equally distributed among the judges. The Chief Judge would determine the distribution of this support thus ensuring fair access.

11. Each judge to be entitled to a sabbatical leave subject to the approval of the Chief Judge under the following conditions:

a) Sabbatical leave to be available after 7 years at the bench and to be taken within the next 5 years.

b) Sabbatical leave taken for 3 months without a submitted plan or proposal for a scholarly program.

c) Sabbatical leave taken for 6 months or an academic year if a proposal for scholarly work or judicial study is submitted to and approved by the Chief Judge. Publication of scholarly efforts is expected.

d) Time for sabbatical leave cannot be accumulated. In other words, if leave is not taken in the 7 plus five year period, a second five year period for sabbatical leave again becomes available with the same 3 month or 6 month (plus) option.

e) Cash cannot be taken in lieu of time.

f) Judges will be maintained on full salary during sabbatical leave but no extra travel or living expenses will be provided. Judges requesting a scholarly sabbatical will be permitted to seek other funds (for example, private endowment, university career development awards, government-sponsored scholarships) to provide for extra expenses if the sabbatical leave is planned to take place away from the judges place of residence.

A sabbatical was, in ancient Judea, a year of rest for the land required in order to enrich the soil and thus ensure bountiful crop yields in subsequent years. Without the sabbatical year taken every seven years the ancients knew that the land became

exhausted and unproductive. The analogy to human endeavour is very apt, particularly when applied to that as emotionally taxing as the work of judges.

The Committee recommends this sabbatical program not as a luxury but as an absolute necessity in assisting judges to maintain the freshness of view-point required every day, day after day at the bench. Without a regular cycle of extended rest and renewal the work of the judges becomes drudgery leading to the same fundamental exhaustion known to occur in the land when it is not allowed time for renewal.

12. Judges to be reimbursed for reasonable travel and related expenses incurred in the discharge of judicial duties.

13. Members of the 1986 Compensation Advisory Committee should be consulted by the advisory group currently examining pension benefits for the judges. In future, the Compensation Review Committee should have official membership in any committee reviewing pension provisions for the judges.

14. Supernumary judges to be paid a salary equal to 60% of the salary recommended for full-time judges, including the retroactive increase for 1986, for performing duties assigned by direction of

the Chief Judge to a degree at least equivalent to 60% of the duties of a full-time judge.

If the duties assigned to a supernumary judge comprise more than 60% of the duties for a full-time judge, the salary paid should be increased in proportion to the increase in percentage of assigned duties.

15. Judges re-appointed under section 5(1)(b) of the Act will presumably be drawing pension benefits. They should, however, receive some additional remuneration for assigned duties. The Committee recommends a stipend for $100.00 per working day. If a judge who is re-appointed is not receiving pension benefits then he/she would properly be reappointed under section 5(1)(a) of the Act.

Notes:

1. A substantive salary increase is recommended in order to provide for the equanimity of the judges. In addition, the salary level must be adequate to encourage senior and more experienced lawyers to accept appointments to the bench.

Society asks judges to perform a unique function; that is, within the framework of the law to pronounce judgement on the actions of their fellow humans. Judges of the Provincial Court must communicate effectively with the broad range of society that they see in court but must do so with dignity and in a manner which commands respect. Furthermore, particular social constraints are properly expected of judges. These are well described in the Lang Report and are characterized as a withdrawal from many kinds of social interaction normally enjoyed by the average citizen.

Because of these expectations and constraints society must, therefore, reciprocate by providing to the judges evidence of their worth to society in the form of a reasonable salary and benefits. Judges must be elevated to an extent which removes them from trivial personal financial concerns; that is, enough to be judicial in their demeanor but not so excessively lofty as to lose the common touch. A well chosen and valuable judge has sacrificed both the freedom and the financial rewards enjoyed by a successful lawyer. Those lawyers who become judges should not be asked to sacrifice further with an inadequate salary and benefits.

2. It is acknowledged that the policy of setting federal court judges salaries independent of specific provincial conditions is inevitable but creates a substantial problem for the provinces. It is also inevitable that there will be disparities in salary levels between the provincial and the federal courts and that this must be accepted.

3. The salaries of the B.C. Provincial Court Judges should not be set as a specific percentage of the Judges of the Federal Courts. This is recommended in order to preserve the independence of the Province of British Columbia to determine salaries contingent upon conditions unique to British Columbia.

4. Salaries of the B.C. Provincial Court Judges should not be set equal to those of the County Court Judges. This is recommended as a recognition of the different level of experience (on average) of the judges of each court. Documentation reveals that the average age of the B.C. Provincial Court Judges, the average years at the bar before appointment to the bench and the degree of specialization before appointment is less in comparison with the Judges of the Country Court and higher courts. For example, as of 1986, 70% of the judges of B.C. Provincial court had 15 or less years of experience at the bar before appointment to the bench and 43% had 10 years or less experience at the bar. (Data obtained from the office of Chief Judge R.B. Coultas). Furthermore, the average complexity of cases seen in the Provincial Court does not always equal that in the Federal Courts. This statement is based in part on the percentage of summary conviction cases, guilty pleas and the comparative percentage of non-serious to serious offenses before the provincial court as well as the acknowledgement that the presence of a jury increases the complexity of the judicial process.

5. The Committee recognizes that the Judicial Benefit Plan currently operates from October 1 to September 30 of each successive year. Nevertheless, the recommendation is made to eliminate the JBP at the beginning of the 1987 calendar year in order to make this change consistent with the recommended annual increases in salary.

6. In the spirit of the current policy of making no distinction between the Puisne Judges and the Administrative Judges regarding salary, it is recommended that there be no differences in the salaries of the Puisne Judges, The Administrative Judges and the Associate Chief Judges. It was stated by Counsel for the Provincial Judges Association at the hearing before this Committee and reiterated by the Chief Judge that distinctions amongst the judges are divisive. It has been stated further that it is the policy to rotate these positions so that all share the responsibilities. Therefore, except for the Chief Judge, all salaries should be the same.

7. Currently in several provincial courts in B.C. some actions before the court such as minor traffic violations are heard by Justices of the Peace under the guidance and direction of the Chief Judge. This relieves the judges in these courts of the necessity to spend court time on cases which do not require the sophisticated legal education of a trained lawyer. Substitution by Justices of the Peace appears to the Committee to bring about a much more

appropriate use of the judges' time without depriving citizens of trained and experienced judges when required. The Committee would like to see this substitution used much more widely in the provincial courts but recognizes that it is most appropriate and best supervised in the larger urban centers. In the opinion of the Committee, the newly legislated Uniform Ticket Act will also relieve the judges of the necessity to spend time with these summary conviction offenses. Justices of the Peace might be used, for example, in some instances where a Uniform Ticket offense is brought to court. Justices of the Peace might also used be more widely in remand court, to accept pleas, and for setting trial dates. Justices of the Peace might also be used effectively in dealing with the indicated matters by extending court room hours, including night court sittings in large urban areas.

8. The Committee also recommends that much greater efforts be made to rotate judges through various geographic locations in the Provincial Courts. This recommendation should be applied particularly to courts in the larger urban areas. No judge should remain without relief in one specific court for long periods of time. Exceptions can be made, where necessary, in less populated areas of the province.

9. The Provincial Court of British Columbia instituted approximately 5 years ago a highly innovative, computerized program to facilitate trial scheduling. This system has been both admired and copied in many jurisdictions in Canada. Coordination of information on availability of court time, witnesses, counsel and police has proved to be extremely effective in terms of saving money and time in the court system. This sophisticated computerized system is in operation in the Main Street Court House in Vancouver. Other courts in Vancouver have some access to this system. Several court systems in smaller urban areas utilize personnel variously called Court Coordinators, Witness Managers or Trial Coordinators to carry out this function. Not all of these have access to computer hardware to assist their task. Unfortunately, there are many court houses in British Columbia which do not have this service and as a result consume large and valuable amounts of time of judges and others in setting trial dates. Judges should not be using valuable time to set trial dates in court. The Committee recommends that a strong financial commitment be made to providing trial coordination personnel and systems to all courts in British Columbia. Managers and court coordinators currently employed in some B.C. Provincial Courts should be much more widely utilized for this function.

10. The Committee was made aware during its visits to several B.C. Court Houses, how important the court house facilities are with respect to the working conditions of the judges as well as others in the court system. In the administration of justice in the "peoples court", it is important to the citizens that justice be administered in appropriate and dignified surroundings. The condition of many of the B.C. Provincial Court Houses in urban centres leaves much to be desired and contributes to stress experienced by the judiciary. Examples of such facilities visited by the Committee are the Provincial Court House in Nanaimo and the Yale Street Family and Youth Court in Vancouver. The Committee forsees the necessity of providing a new court house facility as a priority item to replace Yale Street Court. As a suggestion for a most convenient and currently available location, the Committee proposes the consideration of the site at 12th and Cambie in Vancouver opposite the Vancouver City Hall, formerly the Old Provincial Normal School. Such a court facility could house not only the Family and Youth Court but other courts as well and could properly house the offices of the Chief Judge and his staff. This would place the Chief Judge in a Court House as are all other Chief Justices of the higher courts instead of in a high-rise downtown office building in Vancouver where the Chief Judge is now located.

11. In view of the extreme importance of the judges' function and to ensure consistency in performance of duty as emphasized by both the Committee and the judges themselves, and in consideration of the proposed salary increases, it is recommended that all newly appointed judges undergo an orientation period before appearing on the bench. The Canadian Association of Provincial Court Judges provides a one week continuing education program in Criminal, Family and Civil Law which is held yearly. Orientation of newly appointed judges through participation in this program or its equivalent should be mandatory and not optional. In the form of continuing education, this type of experience might also aid the judges' efforts toward achieving consistency of sentencing for identical offenses. This is a goal which is strongly supported by the Committee if applied appropriately.

Summary Comments

B.C. Provincial Court judges are chosen from the ranks of provincial lawyers and the choice is based on many factors. Whereas a lawyer represents the interests of the client within the bounds of his or her own level of competence, the judge represents the interests of all citizens and a tradition of dignity and impartiality. In order to maintain a climate in British Columbia which nurtures this tradition, the Committee has established as its goal, recommendations which are consistant with this tradition and thus will benefit all the citizens of the province. It is hoped, that the efforts of the Compensation Advisory Committee will encourage other jurisdictions to consider this form of citizen input into the process of compensation review.

Respectfully submitted:

Anne Pomeroy Autor, Ph.D., Chairman

Ellison Framst

David Wilson

December 31, 1986

APPENDIX A

Documents Reviewed

1. Provincial Court Act (R.S. Chapter 341, 1979, as consolidated September 6, 1985); plus amendments Bill 55 and Bill 36-1986.

2. Report and Recommendations of Commission on Judges Salaries and Benefits. Submitted to the Minister of Justice of Canada 1983.

3. List of Judges Salaries and Benefits for all provinces, provided by the Office of the Attorney General.

4. Annual Report: Ontario Provincial Courts Committee 1983-84.

5. Bill C-78. The House of Commons of Canada; Proposing Salaries of Federal Judges, November 20, 2985. Bill C-61, June 27, 1985.

6. Circular No. 46, April 1985, Chapter J-1. An Act respecting judges of the federal and provincial courts.

7. Report of the Judicial Council of British Columbia to the Attorney General of British Columbia; Report No. 3, Pensions for the Provincial Court of British Columbia.

8. Submission of His Honour Gerald R.B. Coultas, Chief Judge presented to the Compensation Advisory Committee, December 1, 1986.

9. Submission from the Counsel for The Provincial Judges Association of British Colulmbia presented to the Compensation Advisory Committee, December 1, 1986.

10. Supplemental Submission from the Counsel for The Provincial Judges Association of British Columbia presented to the Compensation Advisory Committee, December 17, 1986.

11. Price Waterhouse Report: Compensation Survey of Selected Law Firms in Canada 1985.

12. List of Judges: The Provincial Court of British Columbia.

13. Court Statistical Summary Report: Users Manual Index.

14. Documentation on Age and Experience of B.C. Provincial Court Judges prepared by the Office of the Chief Judge.

15. Ministers Order, Province of British Columbia: Ticket Information Fines Regulation.

16. Court Statistical Summary Report July 29, 1986.

17. Various informational documents describing the Judicial System prepared by the Office of the Ministry of the Attorney General.

18. B.C. Provincial Court Judges salaries 1974 to 1985 and County Court Judges Salaries 1974 to 1985 provided by the Office of the Attorney General.

19. Description of the Judicial Benefit Plan (B.C.) and comparison of Provincial Court Judges Benefits in several Provincial Courts in Canada.

20. Report of the Judicial Council of British Columbia to the Attorney General for British Columbia. Report No. 3, Pensions for the Provincial Court of British Columbia.

21. Cost of living increases for Vancouver 1980 to 1985 Data from Statistics Canada.

22. B.C. Provincial Court Judge Availability Report (Historical Analysis) prepared by the Office of the Attorney General at the request of the Compensation's Advisory Committee.

23. Documentation on the cost of operations for the Ministry of the Attorney General including support costs for the Superior Courts.

24. Annual Report from the Ministry of the Attorney General for April 1, 1984 to March 31, 1985 submitted to The Honourable R.G. Rogers Lieutenant Governor of the Province of British Columbia June 1986.

25. B.C. Provincial Court Activity Summary Report by region in British Columbia for September 1-30, 1986, prepared by the Office of the Attornery General October 23, 1986.

26. Appearance Analysis by region in British Columbia for September 1-30, 1986, prepared by The Office of the Attorney General October 23, 1986.

27. Court Room Utilization by region in British Columbia for September 1-30, 1986, prepared by The Office of the Attorney General October 23, 1986.

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